Victor Jones

COUNTY OF ALAMEDA

BOARD OF SUPERVISORS

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# OPEN SPACE AND TRANSITIONAL LANDS

A Symposium



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March 19, 1968

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BOARD OF SUPERVISORS

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Board of Supervisors' Study Session
Alameda County Administration Building, Oakland, California

March 19, 1968

COUNTY OF ALAMEDA

BOARD OF SUPERVISORS

REGULAR MEETING

TUESDAY, MARCH 19, 1968 - 11:00 A.M.

SUPERVISORS' CHAMBERS, FIFTH FLOOR, ALAMEDA COUNTY ADMINISTRATION BUILDING, 1221 OAK STREET, OAKLAND, CALIFORNIA

Members Present:

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| John D. Murphy | 1st District |
| Robert E. Hannon (Chairman) | 2nd District |
| Leland W. Sweeney | 3rd District |
| Joseph P. Bort | 4th District |
| Emanuel P. Razeto | 5th District |

Staff Present:

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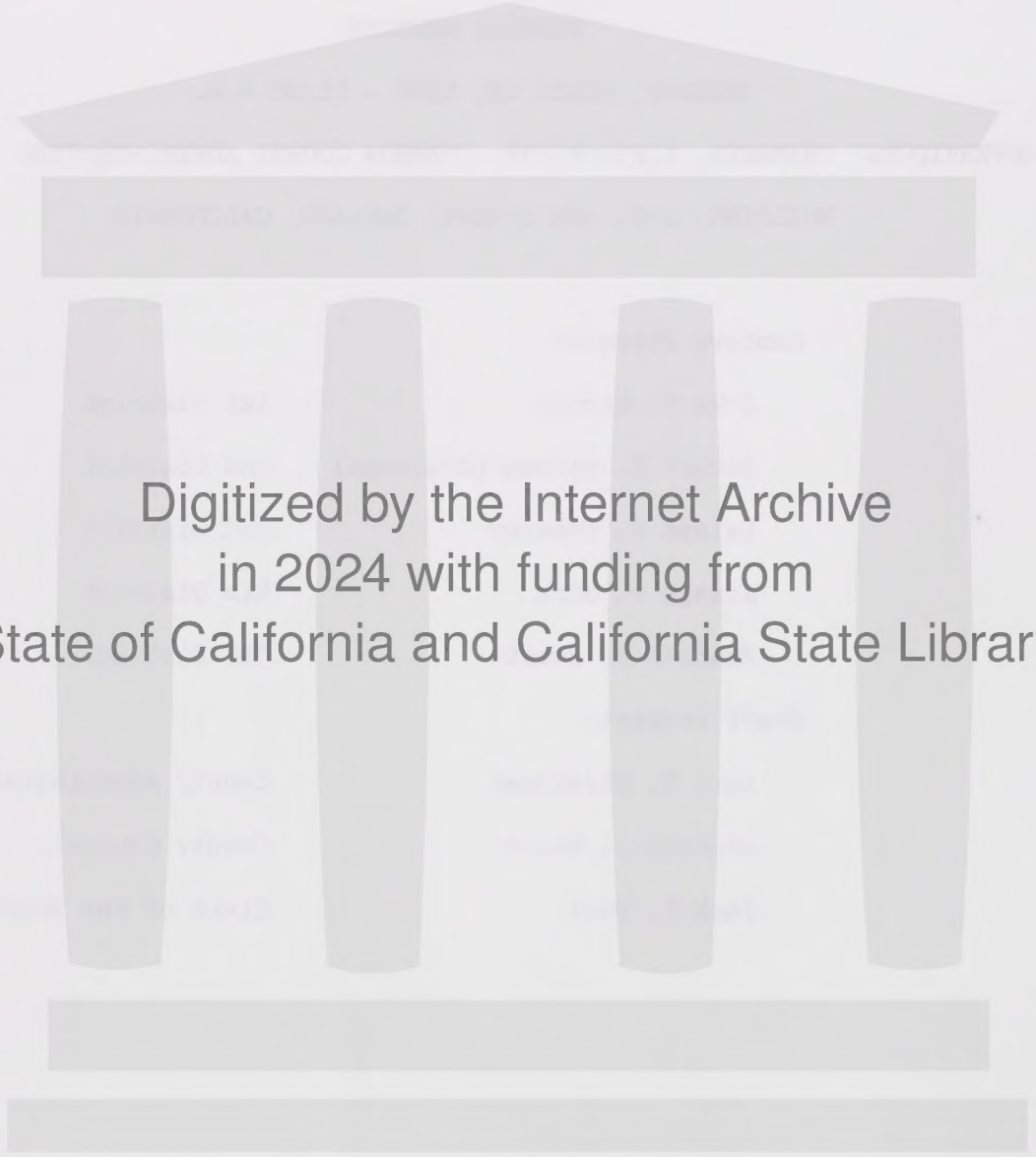
| Earl R. Strathman | County Administrator |
| Richard J. Moore | County Counsel |
| Jack K. Pool | Clerk of the Board |

Agenda Item S-6: Study Session re Open Space and Transitional Lands



# I N D E X

## Symposium Participants

OPEN SPACE AND TRANSITIONAL LANDS

P R O C E E D I N G S

MR. STRATHMAN: Prior to the County's becoming involved in the establishment of agricultural preserves under the California Land Conservation Act of 1965, your County Administrator was directed to do several things. First, we were to furnish to the Board background information on open space and transitional lands, and then to conduct a study session or symposium for additional background and educational purposes for the Board and general public. Following this, a work session would be scheduled with the department heads, representatives of the cities and other public agencies, and interested citizens.

In the first week of February we filed a report in some depth on the background of open space and transitional lands. This is the second stage. You have invited a distinguished group of experts to participate in this study session and all of the experts that we desired to participate are here and were very cooperative in giving their time and effort. Their remarks will be transcribed and become the basis for the work session at a later date. With your permission, we would like to call on them in the order indicated to you on the summary sheet before you. The intent is that each of them will make a brief formal presentation and answer questions of the Board. Basically, this is a symposium and work session for the benefit of the Board. If the public wishes to become involved after the Board is through with its questions, there may be time for some such involvement. General public discussion would be part of the subsequent work session, when County staff is present.

The first gentleman many of you know very well. He has made significant contributions to this area, has been very cooperative in providing

certain advice we have sought from him at the County level, was on the Berkeley City Council, and held a very responsible staff role in recent years in the City of San Francisco. We would ask Jack Kent, Professor in the Department of City and Regional Planning at the University, to make his presentation at this time.

MR. KENT: Thank you very much, Mr. Strathman. Members of the Board of Supervisors, and in particular, my former colleague, your Supervisor Bort. I appreciate the invitation to meet with you this morning. I would like to say a word or two by way of introduction. I have not had any discussions with the other gentlemen who are here this morning, and one of the reasons I accepted was that I too expected to learn something from the others on this panel. Also, I have not been able, as a citizen of Alameda County, to familiarize myself in recent months with the Alameda County Planning Commission plan, and with the policies of your own Board concerning the future development of this County.

It was my understanding from Mr. Strathman that I should attempt to give you my own views, but present some historical perspective to the whole effort to regulate urban growth in a large metropolitan area and to touch on the main outer ring element, open space, and all that it entails in terms of agriculture, public lands and lands for controlling and directing future urban development. First of all, to me the term "open space" has to be thought of in relation to the term "metropolitan" in the sense that we are talking about it here. So I would say that the term metropolitan open space means lands generally surrounding the built-up portion of a large metropolitan area that have three kinds of lands roughly within the area of open space that we are considering. First is agricultural lands of all kinds, intensive and extensive, grazing as well as vineyards, and truck gardens. Second,

public lands of all sorts, lands needed for water conservation, lands needed for recreation, lands needed for flood plain zoning - a very large amount of land, actually, when you see it on the map on the edge of any great growing metropolis. And third, a category of land which has not been very well defined in most American metropolitan areas and counties in those areas, which I would simply call "future urban." We know that certain lands that we now see as open are going to become urban and they are distinct from the other two major categories, if we assume continued growth. They would have to be dedicated to future development. There is, I think, very great significance in the completion by the professional staff of the Association of Bay Area Governments of its recommended preliminary general plan in the context of this discussion of metropolitan open space. The ABAG preliminary plan, we all know, has not been adopted or acted upon by any elected official. It has been completed by the staff and is being debated around the Bay Area - and this will go on for a long time. This plan has significance because for the first time under the general guidance of some system of city and county governments, it has produced a set of major development-alternatives for the entire region to consider, not just the councilmen and supervisors, but anyone interested. And the big, sort of major thing that they put before everyone, if you look at the plan document, is: between 1960 and 1990, the ABAG plan says we'd better get ready to accommodate as many people in the Bay Region as we now have - some estimates going from three and a half million up to over seven million. All the growth trends - without regard to whether this is good or bad - judged conservatively indicate a doubling of the population in that thirty-year period - now a much shorter period; really twenty-two years.

Secondly, the plan report shows that we can accommodate that very,

very sizable increase within the nine-county Bay Region without carrying out a system of metropolitan growth which was characterized, from 1945 to 1965 as a metropolitan sprawl system of growth on the outer edges of all of the urban portions of counties around the Bay. The plan shows, in the report itself, different alternative ways of accommodating the additional three and a half million, and one way, the way they recommend, is really an anti-sprawl plan. It is a compact urban growth plan. It shows that you can accommodate a very large increase in population and still have available in the metropolitan Bay Region and counties such as Alameda County, substantial open spaces in the three categories that I have indicated. It is possible to have, for example, a very significant agricultural industry maintained in the Bay Area if you opt for the recommended system of development. The plan report also presents ways of developing the future Bay Area that are oriented towards sprawl, so that you can make a judgment as a policy maker and government.

Finally, the ABAG plan report, I think, has special significance because of the action of the State Legislature in establishing the Bay Area Regional Organization Joint Committee, headed by Assemblyman Knox. It is almost inevitable, I think, that the debates of that joint committee will include ways and means of either carrying out some system of regional open space or of not providing any way to maintain at the regional level a system of large-scale metropolitan open space. And I think that the debates that the joint committee will inevitably become involved in during this coming summer and early fall will have a direct effect on the future operations of county governments in relation to regulation of urban growth and development; and, on the other side, if county governments choose to do so, the maintenance and enhancement of the agricultural lands - large amounts of public lands that will be needed as we increase the population - and the location

of future urban areas. It seems to me that the publication of that plan by ABAG, forces that issue into the public arena for debate.

There are, in my opinion, three main purposes for addressing ourselves to the question of metropolitan open space. After all, we didn't do this for many, many years; city and county governments did not concern themselves with the way development took place on the fringes, except to promote and assist suburban development. The three purposes are: first of all, to protect and encourage agriculture in the outer ring of the metropolitan region. Economic activities in the Bay Region that are related to agriculture and that grow directly out of its own activity are very sizable and have a tremendously important role in the diversified economy of the entire metropolitan region, and I think it would not be a conservative decision to just let it go by the boards, to let it be gobbled up and destroyed in a piecemeal sort of way which, in fact, is what we have been doing since World War II up to the present.

Second, the reason that city and county governments are concerned with open space, and ought to be I think, is to look ahead and to anticipate and, where necessary - and it will be necessary - to actually acquire vast amounts of open space lands for necessary public purposes if you are thinking of accommodating the generations that are going to be joining us. We will need very large acreages for all kinds of public purposes, not just for regional recreation and parks, but for water supply, flood zoning, and for conservation measures of all sorts. We don't really know the ecological effect of further intensive large-scale population growth and development, but there are more and more warning signs that people are concerned with. And I think we are going to have reasons based on ecological balance which will make us be interested in public control or public acquisition of space for those reasons.

And then, third, city and county governments are concerned with metropolitan open space for the positive purpose of actually controlling and shaping the next wave of urban growth. It is economical to many people, certainly to me, to move in ways that avoid the kind of scattered sprawl development that we have had for more than the last twenty years. It seems to me to be economical to shape urban growth and development for esthetic reasons. There are many unique, visual characteristics of a region such as the Bay Area that create in the minds of many people who are here, justification for not developing certain prominent features and for developing urban growth in other areas. When you make that kind of a judgment, I think it is being made not only for intrinsic reasons of fitness and rightness and developing a city on a great regional site, but you are obviously giving consideration to the economic value of an urban area that has physical character and distinctiveness that people pay money for.

Another reason that city and county governments are concerned with actually controlling and shaping urban growth today in ways that weren't before has to do with the social composition of populations that moved into the outer portions of the Bay Region. I think it is inevitable that we will have to be more directly concerned with the social structure of the entire metropolis and I think this must be something in the back of your minds also.

I will take just a few moments more to give a brief sketch of the way city and county governments got into this issue, which I think may be helpful to you. Between 1915 and 1930 in California, city governments began seriously to regulate the use of private property in the public interest. We didn't get started in ways that affected the entire territory and cities until about that time, and, during those fifteen years, most city governments did it by means of their first zoning ordinances and they did it with the help

of consultants. Between 1930 and 1945, the next fifteen-year period, the urban counties in California - and this is true in the Bay Area also - became actively interested. Their local legislative bodies were concerned with growth on the fringes late in the thirties, then all the way through until the end of World War II, and county planning efforts were started at that time. Zoning ordinances were established in the chunks of county territories that were unincorporated and adjacent to built-up city territories. Between 1945 and 1965, the last twenty years, both city and county governments in the Bay Area have established staffs to assist the commissions that had been appointed by the councils and the supervisors. And during this same period of time, the councils and the supervisors have, really for the first time in this whole sweep of effort to regulate growth, tried to relate policies for future development, in the form of general plans, to ways and means of carrying out those long-range policies. They really didn't do this consistently and consciously until the last ten or fifteen years.

When cities began to do this job, they were not concerned with vast amounts of open space on the growing edge. They were, however, concerned with regulating private property in ways that affected how properties are assessed. I think it significant to point out that most cities around the Bay now have settled policies which their councils respect regardless of changes in the composition of councils after elections, that make it fairly definite that large amounts of territory in built-up cities are not going to change in their intensity and their use. And even though the Assessor who is assessing those properties is doing so on the basis of zoning by a local elected body, he has tended to assume that single-family districts, for example in Berkeley on the north side of the campus, are not going to be changed to more intensive uses; because year after year after year there has been a policy

not to do that. And because of that, he doesn't assess single-family properties, zoned for that purpose, at the potential value they might have if they could be sold for higher intensity uses. I think there is a big difference between the stability of the city legislative body zoning ordinances, and county boards of supervisors' zoning ordinances on the outer fringe. That is one reason why I think the whole issue of assessment and general plan policy and the ability of a legislative body to carry out that policy, is the crucial thing.

Finally, I will close simply by saying that I think the efforts that are expressed in legislation such as the Williamson Act and the land conservation efforts in recent years by the State legislature and by State amendments are all efforts that are aimed in the same direction. None of them, in my judgment so far, is going to clearly enable any existing government, the individual cities and counties in the Bay Area, or the State government to effectively govern the growth and development of a great metropolis and the city and county pieces within that metropolis. But we are moving in that direction. It has taken us a long time to reach that point, and efforts that will grant more time to city and county governing bodies while we debate regional issues in the Bay Area, and whether or not we need a kind of limited government or whether we wish to have the State Legislature step in (which I think is what will happen), and efforts that will give us time and will initiate more local legislative bodies into the effort of guiding and shaping and controlling growth on the edges, is time worth having. The need to build the future extensions of the metropolis in ways different from the ways we have been doing in the past is evident to many people, certainly evident to someone in my field. That, really, is the underlying issue within which you have to look at the Williamson Act, and ways and means to maintain and encourage continued agricultural use today.

MR. SWEENEY: Are you thinking more or less of a freeze at the present time until we can get our forces together, with both city and county, to follow out the ideas you just presented, or would it be more on the order of attrition with its gradual changes?

MR. KENT: I am not suggesting anything specific in relation to Alameda County. I don't think that any county government that has stated in its adopted development policy (in the form of a plan) that large amounts of territory are not needed for the next ten to twenty years for urban development and it therefore can remain in productive agriculture,(and there are definite places for future development in the next twenty years indicated in the plan), that a legislative body such as the County Board of Supervisors could take many steps on its own within existing legislation to control and shape that development. You have to have a majority that stays tough on it and stays with it.

MR. SWEENEY: Like the County; I understand. We have the unincorporated area; that is the key to the future. As for what's going on in the city, we don't have any control over that whatsoever. So it would be a combination of the two of them, I imagine. We should try to work out something in conjunction with one another that would balance the scale, so to speak. Is that right?

MR. KENT: Yes. The urban population are the ones that need the large amount of public open space, not just recreation, but all the utility lands that are required. I don't wish to leave the impression that it is just a matter of cooperation between cities and counties in the Bay region to have an effective open space policy. I don't know what will be needed. I am hoping that the debates before the Knox committee will make it clear. We are all involved in studies, too, I guess, to find out.

MR. SWEENEY: Do you mean regional government and/or ABAG? Don't they complement one another, particularly in planning?

MR. KENT: Well if we had a regional government --

MR. SWEENEY: I know, but we are coming to it eventually, and are at least talking about it. We have our representative, Mr. Bort, on ABAG; and in ABAG we would look for regional planning as one item among many.

MR. KENT: Right.

MR. SWEENEY: When we create, when and if, the regional government, and I imagine it is going to come eventually with some limitations, I am just wondering what role ABAG will have. Are we getting two heads on one body, or will they complement one another?

MR. KENT: I agree with what you suggest in one sense, that ABAG as a voluntary association of city and county government would complement the limited jobs that the regional government is created to perform. All other things could be done cooperatively and in a helpful way. On the other hand I see a role for ABAG which not many have talked about and that is that it should form itself really into a watchdog organization to see that limited government doesn't get too big.

MR. BORT: You made the statement that there are a number of things under present legislation that a board of supervisors could do to buy time or at least to put things in the right direction - if we buy the idea that we have to preserve open space and that there has to be regional planning. What I would like you to do is to specify those items, and maybe it ought to be done this afternoon or in writing. In other words, you obviously would include the use of the Williamson Act in agricultural preserves and certain types of zoning. I think it will be very helpful for Supervisors to look at and decide whether they want to use it or not. We know that Napa County,

for instance, is having a tremendous struggle on whether they should have a 40 acre limitation.

MR. STRATHMAN: Mr. Chairman. During this year we have had a number of people tell us what the Williamson Act was supposed to do and they have attempted to interpret it for us. I think it is particularly appropriate that we have the author of the Act next make his contribution to this symposium. He is serving as executive director of the Legislature's Joint Committee on Open Space Land. You met him when he was down here with his committee, John Williamson.

MR. WILLIAMSON: Mr. Chairman, members of the Board of Supervisors. It is a pleasure to be here, not only for the purpose of discussing a very familiar subject, but also to have the opportunity of dealing with those of you who have very recently been engaged in implementing the Williamson Act. I think that as the meeting has been set off, it would not be appropriate for me to dwell to any great length, nor probably even necessary to dwell upon some of the philosophical aspects which are involved here, nor even some of the history of what has happened to the property tax over the years that has put us in a position of having to deal with it in a special sort of way for special kinds of property. I think we can sum it all up by saying that over the years, the result - at least of this drifting effect - has been to force the owners of land, who have in the past, and as far as we can assume, will in the future wish to make use of the land for agricultural or other extensive purposes, to use his land as a stock in trade, in other words, to do business with the land rather than to do business on the land - which has been the history of his activities.

Now this, of course, then puts a burden upon him, a burden which becomes then a determining factor in the decisions as to when and where developments on this land will take place. Now the result of this, of course, is to

defeat local planning efforts by local government as well as to create real hardships in the process for the owner of the land himself. We are all aware of this situation, because it has a number of different kinds of implications for us and manifests itself in many different ways; and it put us in a position of trying to do something about it over the years. We can probably best sum up what we have today in the way of legislation by going back to where legislation started, and just examing each separate step that the Legislature has taken. I think it should be clear that over the years the assessors of the State of California and the State Board of Equalization in their roles have been bound by the old constitutional standard, which requires that all property be assessed on the basis of its full cash value. Long ago this created problems for the owners of land, particularly owners of land in transition areas, and in 1957, the Legislature actually acted and I don't know how far before that it started considering the problem, but in 1957 the Legislature enacted Section 402.5 of the Revenue and Taxation Code. This attempted to put land use and taxation into some relationship by saying that land that was zoned exclusively for agriculture or recreation - and then later airport use - where there was no probability that this zoning or the use would be changed in the near future, should be assessed on the basis of that use. The Legislature of course thought, and I am sure the proponents thought that they had struck a big blow for the owners of land who were having problems. But the assessors, naturally, questioned whether this was not requiring them to violate their constitutional responsibility. The result was that the Attorney General, ruling on the constitutionality of this Act, said that the Act was constitutional enough but that it really made no change in existing law. In his words, if the zoning had been a meaningful restriction upon the use of the land, it would have affected the value of the land in the

market place, and having affected the value of the land in the market place the Assessor would be assessing on the basis of that value; he concluded, therefore, that the passing of a law of this kind would make no change because the Assessor would have been assessing in this way all the time, as if the zoning which was referred to in this instance were really restricting the use of land so as to affect its value. So the result was that we were right back where we had started and the proponents were still in trouble.

The next proposal which was made finally went on the ballot, following several efforts to put it on. I think that this was the 1960 election. This was what we call Proposition 4. It was a deferred taxation measure which would have authorized counties to enact ordinances under which the owners of land could ask to have their land assessed upon the basis of its agricultural use. Just as long as this land was put to such use, the local Assessor would assess it on this basis. Whenever the owner decided to change the use, he would immediately be assessed on the basis of whatever nonagricultural use he was making of the land, and, in addition, he would have to pay back the difference between the taxes he paid and the taxes he would have paid had the land been assessed on the basis of its full cash value over the past seven years. This measure had several defects; it didn't appeal to local government, nor to the people who were concerned with the planning problems, because it put local government in the position, once it had embarked upon this program, of having to enter into a similar arrangement with any land owner that requested it to do so. It wasn't immediately self-implementing, but once the county embarked upon it, they couldn't stop it. They had to go on from there and everything was entirely in the control of the land owner. There was no guarantee that the lands would be used this way for any particular period of time, and so, therefore, the purpose of land conservation was not

served. Because of the fact that no one was really strongly for it by the time the election came around and there was some strong opposition, this measure failed at the polls, although by very few votes - surprisingly.

The next measure that was conceived and as a result came into being - was the California Land Conservation Act which was enacted in 1965. This was an effort on the part of the Legislature to permit local governments to enter into a program - still bound by the old constitutional standard - whereby the owner of land could make a meaningful decision as to whether he wanted in the future to make agricultural use of his land, and having done so, to enter into an agreement or a contract to that effect with local government. The idea here is that the agreement or contract would be a meaningful restriction upon the use of the land and would in fact depress its value in the market place, and, having depressed its value, would then result in a lower assessed valuation on the part of the Assessor. Now this is a little bit different from the other in that it gave to local governments almost complete control, because local government would be a party to the contract or the agreement and could not be forced by a land owner to enter into any particular contract or agreement on any given piece of land. The local government therefore could exercise this authority entirely within the boundaries of their local planning effort and entirely consistently with the other decisions of local government that they would make. This contract, the terms of which were outlined in the Act, required that it be for a minimum period of ten years automatically renewable, that it could only be terminated upon giving what amounted to nine years advance notice of termination, and that any other termination short of the nine years had to be one based upon the public interest involved and requiring a considerable penalty in the way of deferred taxes. The effort was made here to really make this a meaningful restriction

upon the use of the land, one that would have the effect that I outlined a minute ago. At the same time, the Legislature attempted to deal with the old Section 402.5 by beefing it up to the extent of putting the burden of proof on the Assessor to prove that the zoning ordinance or whatever restriction was on the land, would probably be changed in the immediate future, rather than leaving the burden as it had been before on the land owner to prove that it would not. This rebuttable presumption was applied both to land under and restricted by zoning, and land under a contract or agreement under the Land Conservation Act. The following year the Legislature enacted AB 80. Being a broad and sweeping overhaul of the assessment practices of the State, AB 80 created unusual problems for the owners of rural land, the principal one being that, historically, and most particularly in the rural counties, Assessors had established relatively low ratios of assessment on agricultural land and otherwise. AB 80, proposing that all ratios be raised to twenty-five per cent, therefore posed a greater potential impact to the owners of rural land than it did to other kinds of property that had been historically assessed at higher ratios. So there were amendments put into AB 80 to attempt to at least alleviate some of the adverse effect that the general policies involved would have upon rural land. One of these was to give to the Assessor and to the State Board of Equalization some direction and to establish some restrictions as to the extent that they would use comparable sales in the assessment of land. It continued the burden of the rebuttable presumption as to changes in restrictions that had been established earlier in AB 3128 of 1965. All of this of course took place prior to the approval in the 1966 election of what was Proposition 3, and which is now Article 28 of the State Constitution. These were efforts to equitably and reasonably assess rural lands on a basis of their use if there was a legal

restriction to that use, within the old, full cash value standard. None of it would have worked if the contract, for example, had not actually had an effect upon market value.

Now as you know, the Land Conservation Act also permitted local government and the owners of land to enter into agreements on land, either prime or nonprime, whereas the contracts which we described before were limited to prime land. The terms of the agreements were not specified in the Act, and it was not considered particularly necessary that they be specified in the Act because they would only have effect on the Assessor if the terms of the agreement were such as to actually affect market value. So therefore it was felt that you could leave local government and the owners of the land with this kind of decision between themselves as to how strong they wanted the agreement and pretty much on the basis of how much attention they wanted the Assessor to pay to it. So this is the way it came about.

This brings us to Proposition 3 which went into effect after the 1966 election. Proposition 3, of course, gave the Legislature an authority which they never had before, which was to provide, under certain circumstances, for the assessment of open space land on a basis other than full cash value, namely on a use basis. One provision specified that the Legislature henceforth would have the authority, number one, to define open space land, and then to provide that when these open space lands were subject to an enforceable restriction, that they could then require that the land be assessed on the basis of the use to which the land could be put under the restrictions. There were many bills of course that flooded in, as you can imagine, to implement this in many different ways, and it was a little bit frightening, I think, to the members of the Legislature. The result was that they decided to establish a committee to make a study. However, the committee recommended,

actually, after it was appointed, that a temporary implementation of the act on agricultural lands should be effected. The result of this was that AB 2011 was enacted. Under AB 2011, the Legislature did what Proposition 3 allowed it to do; it defined open space lands as being lands within an agricultural preserve under the Land Conservation Act, provided that if this land was either subjected to a contract, as outlined in the law, or an agreement or a scenic easement deed, which was substantially similar to or more restrictive than the law required for a contract, then the Assessor could not use comparable sales in assessing the land, and he must confine himself to the uses that were permitted under the terms of the contract and that were contemplated by local government at the time it was entered into. This is where we find ourselves today, and the big decision of course which is left with local government is whether they enter into contracts which are established by law where it is possible, or whether they enter into agreements where contracts are not possible or even in cases where contracts would be - it's a little confusing, but that is the way it works. The danger that is involved here is that, if the terms of the agreement do not meet the test of being substantially similar to or more restrictive than the law requires for a contract, then the restriction upon the Assessor would not apply. So local government has to give real thought as to whether the agreement they devised will give the land owner and give them what they wanted in entering into the program in the first place. This is the big question that local governments have to answer, and I would say that it has been answered in many different ways. In the case of some counties the agreements that they have entered into would rather clearly meet the test. In some, they would rather clearly not meet the test, and in a great many of them it would be up to the Assessor and State Board of Equalization, and maybe you and even the

Courts to decide; so that you can be opening up quite a Pandora's Box.

Very briefly, let me outline what has happened. The Land Conservation Act went into effect in September of 1965; by December of 1967, which is a little over two years, approximately 205,000 acres had been put under contracts and agreements, largely agreements. Marin County was the first; I think San Mateo County was the second. After the enactment of AB 2011 and AB 80, and the continuation of many other things that influence and bring about increases in assessed valuation of rural lands, there was a considerable rush in many counties on the part of many land owners to get their land under agreements. The result was that by the lien date, which was March 5th of 1968, almost two million acres in twenty counties had been put under agreement. Again, agreements were used almost exclusively; only one county attempted to use contracts to any great extent. Implementation of the Act has various effects on various counties. Marin County, up to the lien date of last year, had approximately twenty-five per cent of its agricultural land (which amounted to about fourteen per cent of its total land) under agreement. The net effect was to reduce its total county-wide assessed valuation by seven-tenths of one per cent. This meant that, so far as county-imposed taxes were concerned or county-imposed revenues, the tax rate would have to be increased at seven-tenths of one per cent in order to produce the same amount of revenue. For this reason we don't think that counties are going to suffer very greatly and the more urbanized the county is the less it is apt to suffer. Furthermore, we consider that, theoretically, by restricting the use of one piece of land to agriculture, you don't necessarily stop development; you just redirect the development to another place. Thus, if the values theoretically and eventually will develop in another place, the county's assessed valuation probably will not suffer at all.

On the other hand, school districts are another problem. School districts being a smaller, more restricted entity, where the relationships between the total assessed valuation of the land and the total assessed valuation of the district will be considerably different from those in the county, could suffer more seriously than would a county. However, it is almost impossible to say what would happen to school districts as a whole; it would vary greatly from district to district. In addition to that, there is an automatic State reimbursement through the equalization formulas for losses that come to school districts for losses in assessed valuation. This too will vary from district to district, because it becomes almost the function of the decrease in assessed valuation and the difference between the school district tax rate and the computational tax rate that they qualify for under the equalization formulas.

The different counties have implemented the Act to different degrees of relationship with its planning function. I think this is the logical thing to expect. Of course, the counties that went into it early didn't know what to do. They were pioneering, and the result was that they took pretty much what came. As additional counties are added, they are more and more particular and more and more selective in the way they do it. Some counties have a lot of land and nothing particular that needs to be protected or preserved and therefore they're apt to enter into the Act on a somewhat quantitative basis. Other counties, such as Napa County, has a natural resource that is very unique and which the policy of the county government could very well have been directed to aggressively trying to preserve it. Alameda County has lands of this kind. So different counties are going to work on this in different ways and from different kinds of approaches. This has happened; this is to be expected to happen. As I mentioned before, the

big question that counties have to resolve for themselves is actually the nature of the program and the nature of the document that they enter into with the land owners. Policy-wise, the big question and perhaps the weakness in the Land Conservation Act is that it puts government more or less into a position of reacting rather than acting. It isn't designed for an aggressive program and therefore it is quite conceivable - in fact, it was conceived from the outset - that the counties would use this concurrently with zoning and other kinds of controls that counties can use.

MR. STRATHMAN: The next participant must return to Sacramento before the meeting ends because he has another meeting. I have known him for more years than I like to remember or I am sure more than he wants to remember. He has been recognized throughout the nation as an outstanding technician in the field of property tax matters. The executive secretary of the State Board of Equalization, Ron Welch.

MR. WELCH: I want to remind you of a few things that Mr. Williamson said. He almost said my speech for me, and I was pleased to find how much area of agreement there is between Mr. Williamson and myself. To begin with, I want to remind you of the provisions of the constitution. There is in Section 1 of Article 13, a passage which has been in our Constitution since 1879, saying that all property is supposed to be assessed in proportion to its value, and value has been interpreted many times by our Courts to mean, in essence, what property will sell for. This constitutional provision has been breached in recent years in two areas: first there was the passage of the so-called Golf Course Amendment, Section 2.6 of Article 13, which says that nonprofit golf courses shall be assessed not in proportion to their value but in proportion to what they would be worth as a nonprofit golf course, rather than what they might be worth for any purpose that the buyer

would put them to. And then of course in 1966 we had the adoption of the Open Space Amendment which opens up another area where we can depart from the market value concept in appraising property for property tax purposes. Now my function here today is to talk to you about the State Board of Equalization's role in the enforcement of these constitutional provisions. We have two major roles in this connection. By statute we are given the authority - and it is more than an authority - it is a duty, and the Legislature has said it is mandatory duty, not one which we can set aside if we choose to do so, to issue rules and to instruct Assessors in the performance of their statutory and constitutional duties. This, too, has been breached. This generalization has been limited in one respect, that is by the passage last summer of AB 2011 to which Mr. Williamson referred. That is the statute which temporarily implements the Open Space Amendment to the Constitution, and in AB 2011 there is a passage saying that the State Board of Equalization may not issue rules with respect to this particular enactment. The purpose of this restriction upon the State Board, I am sure, was somewhat double-edged. We were told by polite members of the Legislature's staff that it was in order to give the Assessors, or the counties rather, opportunities to experiment in the field. I am sure there was a certain amount of distrust as to what the State Board might do if it were not prohibited in issuing rules in this area, possibly arising in part from a fact that one of the members of the State Board was on the argument against Proposition 3 on the ballot, in the pamphlet that was circulated among the voters.

On the whole, however, I can tell you in all honesty, that the State Board of Equalization - a majority of the State Board of Equalization - is in favor of the Open Space Amendment and is anxious that it shall be properly implemented and that it shall work effectively. So we do have a role in the

issuance of rules and instructions, but this role does not run to an interpretation of the implementation law that was passed at the legislature last summer. Outside the scope of that law, which is fairly narrow - as it properly should be I think - we do have a rule-making power. Our enforcement powers are not very formidable, and, after all, it is very difficult to write rules in the field of the valuation of property; with the result that I don't think we have tied the Assessors' hands to any very considerable extent. We have endeavored to set out in our rules on valuation the accepted principles of appraising, as pronounced by those who have attained professional recognition in this field, and I am really very proud of the rules that we have written in this field. They do, however, go to the valuation of land which does not qualify for the open space treatment.

Now, the second role that the State Board of Equalization has in this field is our inter-county equalization role. By Section 9 of Article 13 - (by implementing statutes -) the State Board of Equalization is required to equalize assessments among the several counties of the State. The implementing statutes are rather detailed: they tell us that at least once in three years we are to make surveys within each county of the State. We currently have surveys in Alameda County that are just getting underway, to determine the average relationship between the assessed value and full cash value of locally assessable property in the County. In the course of this survey we have appraisers out around the County appraising perhaps about four hundred properties. When the assessed values of these properties are compared with the appraised values which our appraisers provide us, we have a measure of the average level at which property is being assessed in the County. We do this in every county of the State every third year, and in between surveys we make projections by statistical methods which provide a pretty close estimate of what the market

value of locally assessable property is in the years in which we do not make surveys. Now the result of these surveys is an assessment ratio for each county in the State. In Alameda County last year we had an estimate of 21.8 per cent, which is the relationship, as we measured it, between the assessed value and the full cash value. If you like to think of it in very simple terms, just think of it as a fraction in which the numerator is the total assessed value of the property on the local rolls and the denominator is our estimate of the total market value of that property. This fraction came out last year at 21.8 per cent. What it will come out to this year remains to be seen because we just started a new survey and frequently new surveys produce results which are somewhat startling. We hope they won't be, in the case of Alameda County. We hope they will be very close to what we found last year, but we can make no promises because each three years we are obliged to find a new bench mark and from that we make projections until another bench mark is produced.

Now there are a couple of consequences that flow from this finding of an average assessment level that make it quite important that the Assessors endeavor to obtain a ratio which is acceptably close to the ratio at which they purport to be assessing. In this County, as you know, the Assessor is assessing at 25 per cent of his estimate of full cash value. As you also know, some of these estimates of full cash value are not right up to the minute. Some of them in years past have been as old as six years, I believe. I don't know whether that is true any longer; it may be that there is a lesser lag now. And, as you also are well aware, in California prices seldom go down; they almost always go up. Section 1605 of the Revenue and Taxation Code, which is one of the sections governing the work of County Boards of Equalization, or, in your County, the County Assessment Appeals Board, provides that if the

Assessor's announced ratio is not within 15 per cent of the ratio which we find, there are rather unfortunate consequences; it is very easy, under the circumstances, for almost anyone to come into the County Board and get a reduction of his assessed value. In some counties, it has been true in the past year, the only year for which we have experience under this provision as yet; everybody that went into the County Board got a reduction in his assessed value. You can see what this might mean in a county like Alameda with hundreds of thousands of assessments, and you can have a tremendous number of appeals and many, many reductions. Most of these reductions turn out to be very small and people are not really very happy about them, but just the prospect of coming in and getting a few dollars reduction might be inviting to a large number of people. So there is a strong incentive here for the Assessors to keep their State Board determined ratio within 15 per cent of the ratio that they announce.

There is a second enforcement device which is found in Section 1823 of the Revenue and Taxation Code. Under this section the State Board of Equalization may order all assessed values on the local secured rolls to be changed. They could be ordered up, or they could be ordered down. We haven't had occasion to order a roll reduced for many, many years, but it is theoretically possible that this could happen. There have been only a very few counties in which the Board has issued such an order since 1955. In 1955, some of you may recall that Alameda County's roll was increased by the Board, but it has not happened since, and there is no probability that it will happen again in the near future, barring entirely unforeseen developments. The State Board has discretion here, without statutory restriction, to determine whether or not a county's ratio is too far from the ratio for counties generally to be tolerated. What we do is take a statewide average assessment

level, which last year was 23.2 per cent, and we tolerate a ratio which comes within four percentage points on either side of that figure, which in this past year would have been 19.2 to 27.2, and no county's ratio was outside of those limits last year. There is a further provision that the Assessors are very mindful of; they call it the Assessors' Report Card. We're directed by law, AB 80, to make a survey of the administrative practices in each county's assessment office at least once in six years. And one of the things we are directed to do, when we make such a survey, is to report publicly the degree to which the county assessor has achieved inter-county equalization as indicated by these triennial surveys of which I spoke a moment ago. The Assessors are very cognizant of this. They feel they must make strong efforts to adhere to the same kinds of practices that we do in our valuation work, in order that we will not find that they have a bad record in comparison with our appraisals. And I think it is in part for this reason that you wish me to be here today, because I am sure your Assessor will not want to do things with respect to lands coming under the Williamson Act that we would not also do.

It is our intention to abide by the legislation which is on the books which implements the Open Space Amendment Act and to value these lands which have qualified under AB 2011 in a manner in which the Legislature has said that they shall be valued. The constitutionality of this act is unquestioned so far as the open space lands are concerned, and it is our intention to value these according to the income productivity of the land as the Legislature contemplated that we should.

I would like to close by echoing something that Mr. Williamson said, although I do this primarily in my capacity as a private citizen rather than as an employee of the State Board of Equalization. I do hope that you will

supplement your Williamson Act implementation by means of zoning, because I feel that it is only in this way that you can direct your population growth, which I think is inevitable and which was mentioned by one of the earlier speakers today, into those areas which are best suited to residential development, and preserve for future generations those areas which are best suited to open space use. A ten-year period, which is the minimum period for a contract and the actual maximum for which any agreements should ever be written that I know of under the Williamson Act, is a very short span of time. I have been told that subdividers will very commonly buy land with the expectation that they will develop it something in the order of ten years hence. Now I don't think that they usually figure on that long a span, but I am quite sure that a subdivision in ten years would be attractive to many - I'll call them speculators - I don't like the term too well - to many people who are planning to develop the land for residential purposes. I think it is important that you endeavor to direct your population growth into those areas which you, as the Board of Supervisors, and your Planning Commission, feel are best suited to residential development and preserve for the future generations, and I don't mean just ten years, but I mean twenty, thirty years, the lands that you have in the wine growing areas and the other areas of the County which are such beautiful areas and should be preserved for future generations.

MR. BORT: Concerning a comment Mr. Williamson made this morning. We have made agreements, (we didn't use the contracts), but there was a difference of opinion about them among the attorneys that appeared before us. Since the agreement must be as restrictive or more restrictive than a contract, there seems to be a question as to whether the agreement should require the approval of the State in cancelling the agreement. Without being a student of the game, I had rather favored that procedure. In fact, we did do

that with one of the agreements, but the rest of them we did not. I realize that the majority of the counties in the State have not put in that requirement and I wonder if you have any comment as to whether this would invalidate them as not being as restrictive?

MR. WELCH: I don't believe so. I would not consider this to invalidate it. I don't believe that you can involve the State under an agreement; I think that if the State wished to be involved it could do so voluntarily, but I don't believe you could coerce them into participation and I very much doubt - and I will ask Mr. Williamson what he thinks - I very much doubt that the State Department of Agriculture will ever involve itself, even in those counties which have written their agreements in these terms. Do you think they will?

MR. WILLIAMSON: No, I think you're right.

MR. BORT: Now there is one other question that has come up that I wasn't aware of when we first put the agreements in, and that is the provision in the Act which says that, if the property is within one mile of a city limit at the time the contract or agreement is signed, then the contract or the agreement is cancelled - at the will of the city council, I gather. And under this provision, if the concept is to actually reduce the market value because of the restriction, I would assume that it wasn't very effective within a mile of the limit of the border of a city and therefore probably isn't effective on the property upon which it should be the most effective.

MR. WILLIAMSON: Well, it certainly would be weakened to whatever extent it would be that this privilege on the part of the city is exercised.

MR. BORT: For instance, if it is zoned agricultural and it is in the way of urban sprawl or development, the Assessor isn't going to appraise that property on the basis of its zoning but on its highest use; and if the

restriction under the Williamson Act really isn't very effective in this, wouldn't he have to assess it for its highest use rather than its actual use?

MR. WILLIAMSON: Actually, I would expect that an Assessor would be bound by the provisions of AB 2011 if the agreement were entered into by the county, even though it were within a mile of the city because he could make no assumption, either, as to possible annexation or as to what the action of the city would be in that event. Now, I would also expect that if, in a given jurisdiction, it should develop over a period time that this particular provision in the law were being used by land owners as a means of getting out from under the provisions of an agreement that they entered into with the county, and if the city had been cooperative in this event, then these facts could be taken into consideration by an Assessor. But in the absence of these facts I would think that the Assessor would be bound of AB 2011.

MR. BORT: I would just make a comment myself. I think one is completely naive if he doesn't think it won't be used by a land speculator.

MR. WILLIAMSON: Well, the only comment I could make on that is that it wasn't in the Act originally.

MR. WELCH: The League of California Cities, I understand, had something to do with that.

MR. BORT: Where you need the teeth of the protection or the restrictions, is where it is face to face with the urban development; and, as soon as it gets within a mile limit of "face to face" it is of no effect. I don't say you said it, but the Act says that.

MR. WILLIAMSON: I think it should be clear that for a city to have the option to cancel, the land must have been within a mile of the city limits at the time the agreement was entered into; so the county would be doing this with its eyes wide open. The city couldn't move to within a mile and have it

apply. However, I would agree with your earlier statement, that this has the potential of being used as you have suggested it could be used, that is, where a county enters into an agreement on land that lies within a mile of the city limit at the time the agreement is entered into.

MR. BORT: Now, one other item. Say a land owner has gone into the agricultural preserve and your county Assessor doesn't really respond to it. He doesn't reduce the assessment to the extent that may be the planning staff thinks they ought to, or particularly the land owner thinks he ought to, I suppose he can then appeal to our local Assessment Appeals Board and if he still doesn't get satisfaction, I suppose he can come to the State body?

MR. WELCH: No, he's through at the Assessment Appeals Board level.

MR. BORT: Could you go to Court?

MR. WELCH: You could, but chances aren't very good in any court in this area because it is a question of judgment at that point. However, if it could be demonstrated that the Assessor had deliberately failed to pursue the legal requirements, I think you could upset the assessment in court.

MR. BORT: Of course this whole thing is really dependent on the response of the Assessor.

MR. WELCH: I think most Assessors, as Mr. Williamson hinted, are rather glad to have this opportunity to escape from the rigors of the market value provision that previously faced them and which many of them were somewhat ignoring. I don't know. I am not speaking for your own Assessor in this connection.

MR. CONCANNON: With regard to the termination of land assigned under the Act in regard to determining its income productivity, what would be your formula in arriving at this?

MR. WELCH: We don't actually have a formula and we haven't yet faced up to this problem in any meaningful sense because we've had only one property so far in our appraisal survey which has been subject to the Williamson Act agreement - none that have been subject to a contract. For instance, our appraiser has estimated the income potential of the property and it seems to me that we are capitalizing it at about five and a half per cent plus taxes.

THE CHAIRMAN: How do you get the income?

MR. WELCH: I can't tell you because I haven't investigated this particular appraisal, but our objective would be to set a net income over and above the cost of production, including the managerial cost of production on an owner-operated property. We would prefer to have a leased property so you could get a net rent, but you don't always get your preference in that respect.

MR. STRATHMAN: Mr. Chairman, we have for the anchor lap of this particular symposium a man who, functioning in the anchor position in a number of symposiums and seminars in the State, has probably made more significant contributions than anyone else, in terms of trying to put these different elements together. He has recently had the proceedings of the California Open Space conference produced; this was a conference held last year to try to resolve a lot of these same questions that the Board is asking today. It was done through the University of California at Davis. The chairman of that conference, and also chairman of the Department of Agricultural Economics, Professor J. Herbert Snyder, has made a very outstanding contribution to the field. I think it is appropriate that he wind up the formal presentations to the Board.

MR. SNYDER: Thank you, Mr. Strathman; Gentlemen. What I would like to do this afternoon, very briefly, is bring to you some of my concern over

the open space problem in general, but, more particularly, with regard to the agricultural economy as it plays a role in the open space program. My own association in this activity started because of concern over the erosion of prime agricultural land - the highly productive land resource - in the State of California. So much of what I have to say comes from more of a statewide point of view rather than for an individual county. However, I think as far as you're concerned, it's appropriate. Most can be interpreted in terms of the particular economic, social, and political forces as they exist at the county level. Let's look just a moment at the State of California and its role in the agricultural economy. Being a native born Californian, I don't have to avow a loyalty to the Chamber of Commerce, but it is also easy for me to state that agriculture is perhaps the premier industry of the State, particularly if you add the primary production of agriculture of some four billion dollars plus each year, to the secondary economic activities of processing, distribution, transportation, supply, service, sales, and so forth, that go on. Thus, I think we can legitimately acknowledge that up to pretty close to a third of what would be the gross economic activity in the State of California, is either directly or indirectly dependent on a viable agricultural economy. Part of the reason we have this is because of our particular and peculiar combination of natural resources in terms of a highly productive land resource and a very equitable climate that allows us to produce a wide variety of agricultural commodities. And we have evolved perhaps the most complicated business structure in commercial agriculture that you will find anywhere in the world, certainly anywhere in the United States, to the extent that our agricultural economic base is involved. Therefore is does become a concern to me as an individual and as a professional economist to see the erosion of this viable productive land

resource that occurs with the natural economic growth in the nonagricultural sector.

Therefore, through time you have had this development that Mr. Williamson presented to you in terms of various political moves and procedures and practices which have been designed to try and accomplish some level of stabilization for agricultural productivity and production. Our limited amount of prime agricultural land and its simultaneous occurrence with a beneficent climate have come under the protective wing, so to speak, of State concern and also county level concern through zoning ordinances, zoning development and, finally, to the State level with the California Land Conservation Act. And in this concern we are one and the same with other commercial agricultural states in the United States. Recently a survey was completed analyzing various programs that have been tried or put into effect throughout the United States. There have been some twenty-three states, accounting for nearly three-quarters of the commercial agricultural production of the United States, that have made some attempt to stem the erosive tide of premature conversions from agricultural to nonagricultural use. This accounts for about three-quarters of the urban population and about three-quarters of the commercial value of agricultural production in the United States. Those states, such as California, that have a viable and active program account for nearly half of the commercial value of agricultural production and at the same time for about half of the total urban population. It is a problem that links productive agricultural resources with a burgeoning population and with the urban economic evolution which is occurring in our country.

The primary issues that I think you have to be concerned with at the county level have to do with the long look to the future. What is the appropriate or reasonable economic role that agriculture, as a production industry and the supporting economic activities which are dependent upon agricultural

production, can play for this County through the long-run forseeable future? What are your strengths? What are your economic bases as far as land, and as far as the climatic combination comes to play on this, is concerned? What contribution is agriculture making to your County economic activity at the present time? I think you can approach your open space problem then through one of the avenues which Mr. Kent raised in terms of viewing open space in its several dimensions, and from my particular standpoint one of the most important of these is open space as a productive part of your economy. That is, what is the value of production that can be gained from dedicating land to agricultural use for a long-run forseeable future? Furthermore, what economic gains can you make through time by making it relatively easy for agriculture to maintain itself on the most productive land resource rather than being squeezed out, and forced to go into a less profitable economic position, and to put a large amount of investment into land to develop it up to a level of productivity that they now have? This could come only at a cost. You would be foregoing the long-run production that you actually have now, and you would be incurring costs to transfer this agricultural production to some less productive land resource base. You can approach this then through trying to assess the contribution that agriculture and the allied industries can make through time for your county. You also have the alternative to consider open space not as an agricultural production unit, but strictly as a value in and of itself - what I would probably call and label a consumption use of open space.

I would like to differentiate between the agricultural productive value of open space where you would probably want, through the use of your planning department, to define areas where a profit-oriented, profit-motivated agricultural industry can be viable, as contrasted to a kind of open space use that may not create any primary income flow to your county. This may be in

terms of some of the flood plain zoning. It may be in terms of some of your recreation and park activities that could be used in conjunction with, perhaps, an agricultural activity or a watershed protection approach - things of this nature. But if you are going to look at agriculture as an element in your open space program, I think it appropriate that you be concerned over the economic profitability of agriculture because in California, and in the United States in general, agriculture is a business, and without the ability to continue to earn a profit and to earn a respectable rate of return on the capital investment that this agricultural productivity represents, you are merely fighting a delaying action.

Perhaps you want to think in terms of delaying actions for this third element of open space, the transition zone - as to how best to accommodate the transition that you may want to make. Because, make no mistake about it, population growth will continue. The requirements and needs for conversion of land from open space to intensive use, people-centered, people-oriented use, will occur. And by forward-looking and forward-planning, I think that you can perhaps chart out those areas, those regions and those kinds of agricultural production that will generate a favorable economic situation for your agriculture through a long-run time period, and also perhaps then best identify those areas of land that can be most profitably used in the short-run, for an agriculture or agriculturally related activity, but which will in the long-run make more sense to bring into an intensive type of development. I believe you also have to look very carefully at this profitability of agriculture to secure what is probably the second most important element in the program and that is the commitment and the dedication of the agriculturist to the program through time. You have heard described the California Land Conservation Act (the Williamson Bill) as a two-party

arrangement: a local government and a property owner. It takes commitment and dedication of both the local government and the property owner to make this program work. So I think that, in order to assure that you will have the dedication of the agricultural property owner which you must have, you must concern yourselves with the economic profitability of agriculture through time to secure his dedication. Because - make no mistake - if I, as an individual owned a fairly large unit of land, I would be quite concerned with what my short-run and long-run economic return with this parcel of land would be. I would want to be in the position of having my cake and eating it, too, if this would be possible. You have to structure a program, and structure your long-run planning so that you can make it attractive to keep this permanent economic feature that economics can provide.

MR. BORT: I have a couple of questions. We're really limited in our tools today to about the Williamson Act and the zoning.

MR. SNYDER: Williamson Act, zoning, and the scenic easements. Now the scenic easement is probably not too attractive because it means that you give up something with probably not much hope of any gain as an individual property owner.

MR. BORT: The zoning, of course, to some extent cannot be an agreement of two parties and it's an unhappy situation because often when you zone, you're taking bread out of the property owner's mouth. Nevertheless, this may be necessary in the long run if you project the tremendous needs of the future population. Really, what I am asking you is another question - relatively speaking, how valuable is the land as agriculture, that is, whether it is fertile. There are places, you know, such as the bottom of plains, where the soil is rich, and there are other places where it isn't very rich, and I wonder if you would make any comment as to how we approach the zoning

situation. It is possible that the richest, most fertile land is also the best situated for housing developments. I just wonder if this should be a part of our consideration whenever we are faced with a zoning matter?

MR. SNYDER: Well, this is one of the unhappy situations and facts of life. Originally in this State, and in most areas of the United States, your agricultural activity started where you had your most fertile, your most productive situation. This also attracted transportation routes, intersections of transportation, marketing centers, and, through time, you've had grow up in the heartland of much of the most productive agriculture, the very urban activity that erodes the highly productive agricultural base. It is much easier and it is much less expensive for a subdivider, for a developer of any stripe, to convert flat agricultural land to a nonagricultural use, and if you push him up onto the hills for hillside development of an industrial park or a residential development, this is going to be more expensive, more difficult, more complicated. And so you have them competing, and, with very, very few exceptions, there are no agricultural activities that can directly compete on a dollar basis with the value of land in a suburban use or in an urban use as compared with the value and income that it will generate as agricultural property. Now you may come up with some example out of celery, cabbage, mushrooms, strawberries, or some of the crops of this nature that can hold their own for quite a long period of time. But, nonetheless, the marginal value of productivity of land in nonagricultural use is much higher than it is in agricultural use. A time or two I have likened the California Conservation Act (Williamson Bill) to a prestretched girdle where you carve out zones that you want the expansion to occur and you leave that garment on as long as you can, recognizing that eventually it is going to have to be traded in for a new one.

MR. BORT: Do we have a limited amount of fertile land in California and is there any fertile land that is not already in agricultural production? Now, if we have a limited amount and then we cover it up with homes, in a sense we're eliminating one of our natural resources that we can no longer afford in a sense to waste or be careless with.

MR. SNYDER: I can give you a few statistics; figures don't lie. We have approximately a hundred million acres of land in the State of California. You lop off half of this in terms of Federal ownership, which knocks you down to fifty million acres of land. Of this, we have about seven and a half million acres that classify as Grade I or II according to Soil Conservation Service Land Use Capability. Now these are the highest grade of productivity land in terms of both the physical soil characteristics and the climatic combination that goes along with it. It will take a wide range of agricultural crops. It has the greatest latitude in terms of absorbing managerial inputs - fertilizer, irrigation, water, and so forth. This is the land that gives you your highest valued crops, generally speaking. We have another, roughly ten million acres of land, that can be used in intensive agriculture, but which require a great deal of managerial control in terms of stemming erosion, in terms of putting in additional fertilizer, in terms of having a broader rotation to maintain the productivity of that soil, and so forth. This totals up to about seventeen and a half million acres of land that is both irrigatable and cultivable for agriculture, but the best of this which would be used for many of the two hundred fifty or so agricultural commodities - about seven and a half million acres - is the size of it. And there are a variety of estimates in terms of the transition of land from agricultural to nonagricultural use. In round figures you're not going to be too far off if you say roughly a hundred thousand acres a year are going from

agricultural to nonagricultural use. Now not all of this land, however, is going to come from the seventeen and a half million acre base. Some of it is coming from the remaining - roughly - thirty million acres of land that is available in the State. So there is a real shortage in terms of the prime, highly-productive agricultural resource. You define very clearly what I would call an economic or technologic irreversibility; once you cement over, pave over, house over a fertile plain, the chances of getting this back into agricultural production are very, very remote and would be an extremely expensive cost. This is what I was alluding to earlier when I made the comment that you may want to try to define for your County area those areas now that are in highly productive agriculture and make it possible for them to continue this through time so that you will not have to convert to more expensive land to get the same value of agricultural production at some time in the future.

MR. BORT: Then there is one other question. I was reading about Napa's problem. Here is a tremendous natural resource in the vineyards and they are faced with elimination due to housing development. Somebody came up with a zone which required a forty acre parcel - and I gather this is a type of thing that is done in Europe to some extent - and I was wondering, if this was put in, whether or not the Assessor would have to recognize that this has really decreased the value of the property?

MR. SNYDER: Well, I would like to make one comment, and then I'll see if Mr. Williamson would have something to add to this. I don't think you can find an economic parcel in the grape industry or the wine industry that is forty acres or less. I think forty acres in itself is not an economic unit as far as agricultural production is concerned. The forty-acre parcel

defined for Napa has subsequently, I believe, been cut down to twenty acres, but I suggested at least that they use the concept of defining open space as having one residential unit per twenty acres rather than trying to define an economic unit for agriculture. They are defining a density basis rather than a viable agriculture, using a twenty or even a forty acre parcel.

MR. WILLIAMSON: I think that the complete answer to your question here would be involved with what the county does in addition to the zoning. It is my understanding that the proposal there is to establish a zone, and to provide for a minimum-size parcel into which the land within the zone can be divided, and, subsequent to the formation of the zone, to either take another action or to consider this zone as an agricultural preserve and then offer contracts or agreements to the owners of the land within the zone. While the zone itself, under Section 402.1 of the Revenue and Taxation Code, would have to be considered by the Assessor in assessing the lands within the zone, the burden would be on the Assessor to prove that the prospect of this zone not being continued was a real one. The only real guarantee that you can give the land owner as to how his land will be assessed would be to enter into a contract or acceptable agreement with him, so that the two together present a different kind of picture from both the standpoint of the county and the owner of the land than either would by itself. Now I think that it is generally recognized that the Land Conservation Act has this weakness and that there is of course no restriction on the ability of the owner to sell land that is under a contract or under an agreement, and there is also no restriction, unless it is placed in the agreement itself, on the extent to which he can continue to divide, through sale or otherwise, the land that is under contract or agreement. The Land Conservation Act puts

a legal obligation on local government in the case of land that is under contract and I think a moral obligation in the case of land that is under agreement, where they include within an agricultural preserve certain lands and proceed to enter into contracts or agreements with certain of the owners, with some of the owners restricting by contract or by agreement the use of the land to agriculture, there is an obligation placed, in the law on contract land, on the board of supervisors to then undertake to restrict the use of the land within the noncontract lands within the preserve to uses that are compatible with the agricultural use that the contract land is under. So the Land Conservation Act, while it left a weakness, in the sense that it didn't restrict the division nor sale, and I don't think we would want to restrict sale as far as that is concerned, it did nevertheless put a responsibility on local government to protect the owners of the land with whom they entered into the contracts.

MR. BORT: We obviously have limited tools for really preserving open space in the future. We have a time - buying tool, in a sense; this is about all that we have. I wonder if any one of you want to comment about what you anticipate might be developed as to future tools?

MR. WILLIAMSON: Well, I'll leave it to Dr. Kent to comment a little later. This is a matter of concern. If a program is to be truly a land conservation program, and obviously this public objective has to be met, the Land Conservation Act as it now stands and by itself really places the matter entirely within the hands of the joint agreement of local government and the owners of the land as to whether anything will happen or not. Logically, from a standpoint of planning, you would expect that local government would be inclined to be more aggressive than would the owner of the land. The owner of the land is concerned from a standpoint of the economic effect upon his

own operation, so the Land Conservation Act concept is a voluntary concept. It has this built-in problem which we think is worth the price you pay until it is proven to fall short of its objective. Zoning, on the other hand, is an exercise of the police power and also is considered to be for the purpose of providing certain benefits to the land itself and to other land, and about the only limitation upon the ability of local government to use it is the constitutional question of when the restriction of use becomes actually a taking of something that is beyond their authority to take without compensation; or the problem of the political pressure in opposition that comes from the owners of the land that is involved here. So there is obviously a difference in the extent to which zoning can be used, but it will depend on many things. However, the two together give, I think, something to both. One of the big problems with zoning, for example, has been the fact that a local government body was in no position to say to the owner of land that, after having restricted the land by zoning, they would guarantee that it would be assessed on the basis of the restriction. So they were many times in the position of restricting the use of land and then having the assessor, not by intent but just in the fulfillment of his duties, coming in and assessing him on the basis of something other than the restricted use. Thus, the political and the moral pressure builds up and you have land owners coming back and saying: "Look! You just have to do something about this. You say I can't use this for anything but agriculture but you are assessing me as if I have the Empire State Building on it. You have to let me out from under this." Any reasonable board of supervisors is going to let him out. Now, with the Land Conservation Act combined with zoning, you can at least eliminate this objection to zoning. At the same time, with zoning you can give

the Board some of the initiative that is lacking just from the Land Conservation Act. The two combined already give you something more than either one by itself gives. Now as to what the Legislature might do to change this, I don't know. I question very seriously whether at the moment there is any real feeling that, for example, the State should move in and mandate any kind of programs or even inject themselves into it in any way. However, I think that some of the problems that Dr. Snyder brought out, as the eventual shortage of land, the policies of land use, become so important to the people of the State that if local government and the owners of the land are not performing, I think logically the State would move in.

MR. BORT: Is there any possibility, on a straight zoning matter, for the government to buy the property and lease it back on the long-range basis but make the lease actually less than taxes?

MR. WILLIAMSON: This and many other proposals of course are made for the control of land. The question of land use in California is really not a question that relates to the land. It relates to the people. It has been said many times we don't have a land shortage, we have a people surplus. The amount of land is fixed. We are not going to change the amount of land very much but as the number of people increase, the pressure of people on the land becomes more intensive. So that even the question of land use in the most remote part of California then, to a certain degree, becomes an urban problem. The closer the land is to where the people are, the greater the pressure of all kinds: the greater the pressure on government, the greater the pressure upon land owners, the greater the pressure on the market, the greater the pressure upon the people and their needs. So that there become situations where it is pretty hand to conceive that much land is going to be conserved through a voluntary program. Government is going to have to enter

into it and of course we assume that they already are. We assume that local governments are already acquiring what land they need and can pay for under the circumstances. The question of purchasing and leasing back is a perfectly logical thing. The only thing is, I don't know very many cases where it has been done, perhaps because you can't politically go to your people and say look, we want so much money for this purpose.

Another proposal, of course, is the question of acquiring less than the fee interest which would, on the face of it, seem to offer a less expensive way of complete control by government. This doesn't work, because in California the development rights which you would be purchasing constitute such a large percentage of the total value of the land that you might as well acquire the fee, and most government agencies are finding this to be the case. So here you have pretty much a clear-cut choice. On the one hand you have public ownership and in California, as Professor Snyder pointed out, fifty per cent of the land is owned by the public now. You would ordinarily say, "Why do we need any more?" And, of course, the answer to that is it just doesn't happen to be where we need it to be to meet the needs. So obviously, additional acquisition will be called for. The needs of the State are so great, and are becoming so much greater, that, in view of these facts, it would seem pretty unreasonable to expect that they are going to be met solely through public acquisition of the land. Therefore, open space needs, agricultural needs, recreation needs and all these are really going to have to be met on privately-owned land. And this, obviously, means that they are going to have to be done in a way that the private owner of the land can continue to conduct a profitable economic operation of his land. These programs here are directed into that field in attempting to solve these problems.

MR. RAZETO: Getting back to the agreement that we have signed. Does

the Act permit the release from the agreement by simple vote of the Board of Supervisors? And, can the Board of Supervisors fix the penalty for release of a contract?

MR. WILLIAMSON: The Act permits the Board to enter into almost any kind of an agreement with the owners of land. And this of course has been done. The question arises as to whether the agreement that is entered into meets the test of being substantially similar to or more restrictive than a contract is required by law to be. This means that if the agreement that is entered into does meet this test; that is, if it is considered to be substantially similar to or more restrictive than a contract, then the land under that agreement is required to be assessed under the provisions of AB 2011 which rules out comparable sales and limits the Assessor to the uses which are permitted under the agreement. If the agreement does not meet that test, that is, if it is not aubstantially similar to or more restrictive than a contract, then the Assessor's hands are not tied. Then he would assess according to the provisions of Section 402.1 of the Revenue and Taxation Code. This constitutes the reason for the difference. Now, if you look at the provisions of the Act for a contract, consider what the Act requires for cancellation of a contract, and then try to determine whether your agreement could be considered by anybody to be substantially similar, then you have made a decision.

Let's see what the Act requires for a contract. It says, first, that cancellation of any contract shall not be effective until approved by the Director of Agriculture upon a recommendation of the State Board of Agriculture. However, I think it must be pretty generally agreed, as Dr. Welch said this morning, an agreement need not include this provision in order to meet the substantial similarity test. The Act says that a contract may be cancelled on a mutual agreement of all parties to the contract and the State. So if you take the

State out, you are left with the provision that the contract or agreement could be cancelled on the mutual agreement of all parties, which would be the county and the land owner; so you are down to a bilateral question. However, the law goes on to require for contracts certain other things. It says that the Director of the State Board of Agriculture may recommend and the Director of Agriculture may approve the cancellation of a contract only if they find several things. First, they must find that the cancellation is not inconsistent with the purposes of this chapter, which is to preserve land. Then they have to find that the cancellation is in the public interest, so, therefore, it couldn't be just in the land owner's interest. These are what are required.

Then it says that certain things may not be used as a basis for cancellation. First, that the existence of an opportunity for another use of the land shall not be sufficient reason for the cancellation of a contract. It says that a potential alternative use of the land may be considered only if there is no approximate noncontracted land suitable for the use to which it is proposed that the contracted land will be put. In other words, it says that a contract can't be cancelled just because the land owner wants to put it to a more profitable use and, even then, they couldn't consider this if there is any other land around that isn't under contract that can be used for that purpose. Then it goes on to say the uneconomical character of an existing agricultural use will likewise not be sufficient reason for cancellation of a contract. The uneconomic character of use may be considered only if there is no other reasonable or comparable agricultural use to which the land can be put.

The question here is now close to those provisions do you have to come with an agreement in order for it to be "substantially similar or more restrictive than." It would seem to me that, for the land owner to just come in and ask for the contract to be cancelled, would obviously not come close to those provisions, say that the Board and the land owner could agree that it

should be cancelled just because they decide to agree. It would seem to me that the Board, in the absence of the State, would then be bound to make these findings: that the cancellation is in the public interest; that it is not contrary to the Act; and that these other nongrounds are not violated in determining the cancellation. This would be the only way that you could be sure that you had an agreement which was substantially similar or more restrictive than a contract. Now if you did, I don't think there is any question. There is some question if you fall short; if you fall far short, then the assessor is relieved of the responsibilities of AB 2011 and is back on 402.1.

MR. RAZETO: Why did the law provide two systems - the contract and agreement method of obtaining this objective?

MR. WILLIAMSON: Well, at the outset, the bill was drafted toward prime land; and if you will notice, through the Act there still are references which would seem to indicate that nobody was concerned about anything but prime land. So the bill was enacted, to provide for the preservation of prime land and the public purposes were stated in this relationship. It was later that the question of other lands came in. At this time, there still was felt that prime land deserved a position of priority from a conservation point of view, and that, therefore, it should be set aside. There is a State contribution to the counties for prime land under contract, and a guarantee, really, on the part of county to the land owner that if his assessed valuation were for any reason unavoidably increased above the point at which the contract was entered into, then the State would make offset payments to him. So there is a program here for prime land that contains these privisions that were not later considered. The people who have the non-prime land said, "We need this, too, and, for whatever effect it may eventually have on the assessor, we are willing to have a separate program; just leave the provisions open to us and we will

arrive at whatever agreement we can with the boards of supervisors and the assessor will evaluate this, and will do whatever he can under it." Now, this was before Proposition 3 and this was before 2011. So that the public had its full protection here through the Assessor who would give what weight to the agreement that he considered the agreement warranted.

MR. RAZETO: There is a certain element of uncertainty and risk in the agreement that the Assessor might not give it a reduction in assessed valuation. In other words, the owners are willing to take a chance with the boards of supervisors and the assessors to enter into an agreement that they think suitable for their needs and still may give them some reduction in assessment that they don't enjoy without the agreement.

MR. WILLIAMSON: That's right, for whatever it is worth. For example, in Sonoma County they have evolved an agreement that is only for seven years and that requires therefore only seven years notice; this clearly would not qualify under AB 2011. But Section 402.1 very clearly requires the Assessor to give whatever value to it that it is worth. The Assessor then would assess land under this at a rate that is lower than that for land that is not under agreement - undoubtedly higher, however, than he would have if the land were under a contract or an agreement that was similar to a contract. Most of the agreements that have been entered into are pretty strict, pretty close to a contract. In many of them they have, with the exception of eliminating the State Board of Agriculture and the Director of Agriculture, actually incorporated into their agreement the provisions in the law for contracts.

MR. RAZETO: Is there any penalty provided under a contract for cancellation of the contract?

MR. WILLIAMSON: Yes, and most of the agreements have a similar provision which provides for the immediate reassessment of the land in the event -

MR. RAZETO: Can it be waived by the Supervisors?

MR. WILLIAMSON: You can waive it, yes, and of course this again is to take care of the situation where it is warranted that it be waived.

MR. RAZETO: That will have an effect on the Assessor. When he goes to appraise the property he would be restricted under a contract; apparently this could not be waived by a Board.

MR. WILLIAMSON: The Assessor is only bound by the provisions of the agreement as long as they last. The law requires that the minute that there is a cancellation (which is to be distinguished from termination), the land has to be immediately reassessed on the basis of no restriction and then the deferred taxes become due in the amount of fifty per cent of the new assessment valuation. That is twelve and one-half per cent of the market value. Since this would be true if it was cancelled at the end of the first year, it isn't like the deferred taxation schemes that you have heard of.

MR. RAZETO: That I can understand. An owner would say: "Here I have a chance to make a lot of money, I can sell this land for a good price." He'd gladly pay that.

MR. WILLIAMSON: But he can't do that unless you find that it is in the public interest to cancel the agreement, that it is not inconsistent with the terms of the Act, and that he is not doing it to make a more profitable use of the land. The same would be true under contracts except the Director of Agriculture would have to make these findings instead of the Board. I think it is rather important to raise the question, although I can't say anybody knows exactly how it is going to come out. There is one company where the owner of land under agreement requested to have certain land withdrawn from the agreement. After extensive consideration, apparently this was done. I don't know whether the board made these findings. If they did, then there is no problem. If they didn't make these findings, then I think the Assessor

would be compelled to say, "None of your agreements are any good. I am not going to assess them under 2011, I am going to assess under 402.1." So a liberal action with respect to the cancellation of one agreement could conceivably affect the validity of all of your agreements.

MR. MOORE: I wanted to ask Mr. Williamson a question. I have a little difficulty ascertaining the legislative intent in one particular area. The minimum term for the contracts or agreements is ten years. If, in Section 422, the enforcible restriction is substantially similar or more restrictive than a contract, then the Assessor is bound by it. But under the law, as I understand it, the enforcible restriction for the benefit of the property owner is effective only until 1970. Why would the Legislature provide for a minimum ten year period and then provide that the enforcible restriction will automatically die as of 1970? Isn't it conceivable that the Legislature may not enact another section similar to 422, in which case all of these agreements that we have entered into would be completely ineffective?

MR. WILLIAMSON: I suppose that anything is conceivable. I think that it is even conceivable for the people to repeal Proposition 3 within this period of time. However, what was in the minds of the Legislature at the time was to implement Proposition 3 to this extent and for a limited period of time in order to give the Joint Committee on Open Space Lands an opportunity to look at the whole problem and to come up with recommendations for implementation, and for the Legislature then to enact a permanent program priot to expiration of 2011. This is what we are in the process of doing. Should the Legislature fail to enact a permanent program and thereby leave any of the land owners in an untenable position as a result of the agreement they signed, where only these land owners and nobody else would be involved, it would be inconceivable to me that the Legislature would not take some action which would meet their needs and perhaps relieve them of it. The purpose was that the

Legislature wanted to move to this extent in the field of agriculture and scenic easement deeds because they had the mechanics of a program of restricting the use of the land through contract or through the deeds and they felt fairly safe in going to this extent for this period. But having created the Joint Committee on Open Space Lands, they didn't want to say: "All that is left for you to be concerned about then is everything except agriculture." They wanted the Joint Committee to be looking at agriculture, too. This is a temporary thing but I am sure that the Legislature would not leave anybody hung up with something that wouldn't be what he had thought he was getting at the outset.

MR. BORT: You might be interested to know that some of our contracts were written so they could get out of them in case the Legislature failed to act.

MR. WILLIAMSON: Well I think this is a reasonable thing to do. I am not sure that it is necessary but I am sure that it is perfectly in order. There are other counties in the State where this is the case.

MR. MOORE: Some of ours provide that if ever the enforcible restriction becomes null and void the contract does likewise.

MR. WILLIAMSON: Yes, and another provision that would be in order would be if the Legislature enacts a program or another kind of an instrument and recognizes it as it has a contract or an agreement under 2011 that the signatories, the people who have come in under this program, would either automatically or by simple act of agreement immediately have their situation transferred to the new instrument or the new program. I think that we have to assume that the Legislature is not going to do any limited group of people any disservice, either by leaving them hung with something that nobody else has or freezing them out from something that everybody else has.

MR. RAZETO: I wish you hadn't included agreement. Under the contract it was all or nothing at all. But evidently nobody likes the "all" - nobody wants to get into contracts. Everybody wants to get into this other area called the agreement field, where there is the greater flexibility depending on how liberal you get.

MR. WILLIAMSON: There is this risk as to how far away from the standard, which is the contract, you can deviate and still not put the Assessor in a position of saying that you've gone too far. Now the Assessor is going to be the first judge, if he assesses on a given basis and the State Board picks up that particular piece of property in its sample, then they're going to be the second judge. I suppose that, presumably, it could wind up in court, which would be an even higher judge. So I would have to say to the owners of the land here, that this is the risk that they are taking, if they ask you to be too liberal with them, that they may wind up with an agreement which will restrict the use of their land ninety per cent satisfactorily - but still short of meeting that "substantially similar or more restrictive than" test. So then the Assessor will say "I won't pay any attention to Section 423, I'll assess under 402.1," and this means only he has to look at the restriction for what it is.

MR. RAZETO: One more question. Is it possible for the local County Assessor to pass along to the State Board of Equalization this matter of determining what value this land should have for assessment purposes? In other words, a local Assessor can say "I am in doubt how to interpret this agreement. I would like the State Board of Equalization to review it and advise me on it."

MR. WILLIAMSON: No. The Legislature had two things in mind when they enacted 2011; one of them was that they wanted counties to have considerable freedom to develop another satisfactory enforcible restriction that would meet the needs and meet the requirements of this substantial similarity test. The

Legislature wanted to leave counties and cities with the opportunity to innovate for a limited period of time. In order to be sure that they innovated by themselves, they said that the State Board of Equalization is relieved, for the purpose of determining how these properties are going to be valuated, of their rule-making authority. This in effect said to the State Board "stay out and leave this to the counties and the land owners to work out. After they have worked at it for a while, we'll all take another look at it and see how they have done and we'll enact a permanent program." Thus far the State Board is out of it. However, the State Board isn't out of it on the question of inter-county equalization. May I answer one question that was asked of me during the intermission. The question arose as to the ease with which cancellation could be permitted by boards of supervisors and I think perhaps I haven't made it clear. There is only one way that either party could get out from under the provisions of a contract or an agreement by himself, by his unilaterial action; this is the termination procedure, where he gives notice of nonrenewal and waits for nine years until the restrictions are gone. The cancellation procedure was not considered to be a normal, ordinary, easy way of getting out because, obviously, if it is an easy way to get out then you are right back where you were with zoning. The Assessor is in a position of not paying any attention to it. We wanted the agreement to be something that would stand up and would really be a meaningful, sufficiently permanent restriction on the use of land. To allow the board and the land owner, either one by himself, to bring this thing to a sudden end would defeat this purpose. Cancellation should not be looked upon as an easy way out. It is an emergency situation, one that really is tied not to the man but to the land itself. Something happens to the land that makes it an unreasonable thing to continue the restriction on its use. Then you use

cancellation. You don't use the cancellation because somebody comes in and says, "I have a good sale - a good price - for my land. I want to get out from under. I can sell it for more if I am out from under than if under it." This is just the way the law was intended. Now the other thing in this connection I should make clear is that there is nothing that says he can't sell the land, even though the restriction is there, but the restriction goes with the land, and the buyer buys it subject to the restriction and he bases his price on what he can do with the land after he buys it.

MR. McKNIGHT: Ed McKnight with the Alameda County Taxpayers' Association. I was the one that asked that question. I still would like it made clear for the record that in a case that you have pointed out, in an emergency situation where the Board might want to cancel, can they waive the penalty?

MR. WILLIAMSON: The Board can waive the penalty. Having made the situation as to the cancellation, then they would presumably weigh the impact of the penalty upon the situation and in certain extreme situations could very well easily say it not only is in the public interest and a completely fair thing, but also that it would be a completely unfair things for us not to let this man out, and, furthermore, that the situation is such that it wouldn't even be fair to impose the penalty or part of the penalty. That is part of the judgment left with you. I doubt very seriously if you can impose a restriction without leaving the man with some recourse, without leaving him with some equitable way of dealing with emergency situations; and the Board would make this decision.

MR. RAZETO: You did say, however, that if the penalty is lightly waived it may prompt the Assessor to disregard all of the contracts with this clause in it, and permit the Assessor to assess it free from the agreement?

So it all depends on how we waive the penalty. If there are solid reasons in their record, fine. Otherwise a waiver of any penalty without solid facts and justification could lead to a disregard by the Assessor of all the agreements. Because then it would seen that it was not entered and carried out in the spirit at all.

MR. WILLIAMSON: Right. I think that since you entered into your program and signed agreements or contracts, that the Assessor will have to assume that you will enforce these contracts. If you ever let one man out easily, then the Assessor, I think, has to take another look at your performance under your agreements and could very easily then say, "Well, this isn't a 423 agreement; this is a 402.1 agreement."

MR. BORT: I think the difficulty is that nobody has ever presented a good example of a factual situation that might be a valid reason to let him out. I suppose you could think of some outlandish thing like having a flood and it washed all of the top soil off so that nothing was left but bare rock. What might happen to property if, for the good of the community, this was the only place a power plant could be built? Somehow or other you have to come up with, as you say, what would be known as an emergency situation.

MR. WILLIAMSON: I think that what you have to determine here is what is the community interest. If the public interest is to build a power plant, that is one kind of public interest. If the public interest is to keep its conscience clear, that is another kind of public interest. But it has been determined on the basis of the public interest, not on the basis of the land owner's interest.

MR. BORT: The only weakness of that is, if the Board of Supervisors does its job, we are all right. If a board of supervisors ever makes a determination that it is in the public interest to do something when it actually isn't, it would be a very difficult thing tp challenge in the courts.

MR. RAZETO: Has there ever been any court tests as to the constitutionality of this Act yet?

MR. WILLIAMSON: There have been no court tests. There was a question of the constitutionality of the Land Conservation Act before Proposition 3. The Attorney General ruled that it was constitutional and I am sure that this was the logical thing because of the sequence of anticipated events that I have described a while ago where you have a restriction affecting market value which does affect the assessed valuation. Now there was a challenge or a contest of the assessment arrived at by an assessor under the Land Conservation Act agreements at the outset. The assessor in one of the counties, after agreement had been entered into, assessed on the basis of the restriction, but assumed, in making his assessment, that, because the land owner had the option of terminating the agreement nine years hence, he would do so. He therefore assessed, not on the basis of a permanent agreement, but upon the basis of a nine-year agreement and no more. The owners of the land protested this before the board of supervisors and they said, "Mr. Assessor, you're wrong. Instead of assuming that I will exercise my option to not renew, you should assess on the basis of the assumption that I will exercise this option and that, until I do, it is a permanent agreement." The board upheld the owner of the land and the result was that the assessments were further lowered. Now, 2011 is consistent with this principle, in that it says that Section 423 is only binding upon the assessor until the time that the owner gives notice of termination. The minute he gives notice of termination, then 423 goes out the window and we are back on 402.1.

MR. RAZETO: The only thought in my mind is that perhaps if there were a sound challenge, it would affect the school district where you have a small geographical area and where there's a large section of land under agreement or contract. This would depress the assessed evaluation in this small school

district, which means that the other owners will have to pick up the increased cost, and would impose a heavy burden upon the property owners, who would have to make up the difference. County-wide, I could see it would not have a great deal of effect. Alameda is a big county and it could be absorbed very easily, but in a smaller unit of government where the tax base is considerably undermined by these agreements (by reducing the assessed evaluation), would that cause an undue burden on the remaining property within this district so as to be unfair and unjustifiable?

MR. WILLIAMSON: I am sure that there will be an impact and that there will be a negative impact obviously, upon all of the land that isn't under agreement, and other property within the taxing jurisdiction; this is what is involved here. You're shifting tax burden from a particular kind of land on to another kind of property. Now as to the extent or the magnitude of the shift and the magnitude of the increase in tax rate that will take place, this is going to vary from school district to school district and from county to county. Now it would appear that the problem of shifting from land on to urban taxpayers is not a very meaningful one as the percentage of change in the tax rate of the urban property in order to pick this up, is going to be relatively small. The problem could be in a school district with the land that is not put under agreement because there you're shifting tax burden from land to land even though they may be used for the same purpose. It may be land that is identical and the only difference between them being that one is under agreement and one isn't. So this will have the obvious effect, once a program is started in an area, of influencing all land owners to get under agreement in order to protect themselves. I don't know how significant this is going to be but the pressure will be there. However, as I said previously, this is going to vary from district to district, and school districts of course are the

ones that we are most concerned about and we are concerned about them because this is not only a worthy public function to preserve agricultural land but it is also a worthy public function to educate our kids.

But even here, it will vary from district to district because, any pick up now by the State or any replacement of lost revenue by the State, comes about through the equalization formula. A basic aid district, which gets no equalization, obviously is not going to get any help from the State. However, in a basic aid district, the reason it is such is that the property in that district is not carrying the same load for education as property in another district. That is why it doesn't qualify for State aid. In those districts that do qualify for State aid, then the State is going to replace part of this lost revenue and it is going to be pretty much a function of, on one hand the decrease in assessed valuation, and on the other hand, the difference between the tax rate of the district and the computational tax rate which they qualify for. For example, if an elementary school district had a two dollar tax rate and it qualified for supplemental aid, then the State would replace a dollar sixty cents of that two dollars, so the loss to the district would be only forty cents. If the district only qualified for equalization aid, the State would only replace a dollar of the two dollars that would be lost and the rest of it would have to come out of district revenues. In addition, most districts, as a result of the decrease in assessed valuation, will benefit through the State contribution for transportation of students. I think it's agreed that none of them would lose. Some of them will benefit; some could benefit considerably. By reducing the assessed valuation, you reduce the annual payments the districts have to make in repayment of school construction loans, so the district would benefit there in their annual payment. If the result of the reduction in the annual payments puts beyond a twenty-year limit, greater amounts of money that would otherwise have to be

repaid, the district benefits to that extent, too. So there are a number of facets in the equalization formula that tend to replace the money that would be lost.

Now, the biggest problem districts are the ones that already have extremely high tax rates. For example, if the district has a five dollar tax rate and you only replace a dollar sixty cents of what they lose, they are still losing three dollars and forty cents a hundred. They could be hurt. And I think we're just going to have to give every consideration to some way of replacing this lost revenue.

MR. BORT: Half Moon Bay was agonizing over this action in San Mateo County; but before we put any of ours in, I asked Mr. Strathman to check out specifically whether any agricultural preserves we were considering were going to have real adverse effect on the school district. It was reported to me that we had none under consideration.

MR. WILLIAMSON: I think the two categories generally are the basic aid districts on the one hand and extremely high tax rate districts on the other. These are the ones that can get hurt very badly

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